

ASSEMBLY BILL

No. 1508

Introduced by Assembly Member Gatto

January 14, 2014

An act to amend Section 1203 of, and to add Sections 19.1, 29.9, and 1170.83 to, the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 1508, as introduced, Gatto. Criminal procedure.

(1) Existing law requires, when a range of punishments is prescribed for a particular crime, the punishment to be inflicted in a particular case to be determined by the court, subject to certain limitations, and requires, when a statute specifies 3 possible terms of imprisonment, the court to order imposition of the middle term, unless there are circumstances in aggravation or mitigation of the crime.

This bill would provide that, when determining the punishment to be imposed in all misdemeanor and infraction cases, or when determining the term to be imposed when a statute specifies 3 possible terms of imprisonment, the fact that a defendant did not understand the consequences of his or her actions because he or she was raised in an affluent or overly permissive household shall not be considered a circumstance in mitigation of the crime.

(2) Existing law requires the court to hear and determine the suitability of probation in a particular case. At the hearing, the court is required to consider any report of the probation officer, and, if the court determines that there are circumstances in mitigation of the punishment prescribed by law or that the ends of justice would be served by granting probation to the person, the court may place the person on probation.

This bill would provide, for purposes of these provisions, that circumstances in mitigation do not include the fact that the defendant may not have understood the consequences of his or her actions because he or she was raised in an affluent or overly permissive household.

(3) Existing law provides that no act committed by a person while in a state of voluntary intoxication is less criminal by reason of his or her having been in that condition. Existing law provides that diminished capacity, diminished responsibility, or irresistible impulse is not a defense in a criminal action or juvenile adjudication hearing.

This bill would provide that an act committed by a person is not less criminal by reason of his or her having been raised in an affluent or overly permissive household, nor is it a defense to a criminal action or juvenile adjudication that a person did not understand the consequences of his or her actions because he or she was raised in an affluent or overly permissive household. By eliminating a potential criminal defense, this bill would impose a state-mandated local program.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 19.1 is added to the Penal Code, to read:
2 19.1. In all misdemeanor and infraction cases, the fact that a
3 defendant did not understand the consequences of his or her actions
4 because he or she was raised in an affluent or overly permissive
5 household shall not be considered a circumstance in mitigation of
6 the crime in determining the punishment to be imposed.
7 SEC. 2. Section 29.9 is added to the Penal Code, immediately
8 following Section 29.8, to read:
9 29.9. As a matter of public policy, it shall not be a defense in
10 any criminal action or juvenile adjudication that a person did not
11 understand the consequences of his or her actions because he or
12 she was raised in an affluent or overly permissive household, nor
13 shall any act committed by a person be less criminal by reason of

1 his or her having been raised in an affluent or overly permissive
2 household.

3 SEC. 3. Section 1170.83 is added to the Penal Code, to read:

4 1170.83. The fact that a defendant did not understand the
5 consequences of his or her actions because he or she was raised
6 in an affluent or overly permissive household shall not be
7 considered a circumstance in mitigation of the crime in imposing
8 a term under subdivision (b) of Section 1170.

9 SEC. 4. Section 1203 of the Penal Code is amended to read:

10 1203. (a) As used in this code, “probation” means the
11 suspension of the imposition or execution of a sentence and the
12 order of conditional and revocable release in the community under
13 the supervision of a probation officer. As used in this code,
14 “conditional sentence” means the suspension of the imposition or
15 execution of a sentence and the order of revocable release in the
16 community subject to conditions established by the court without
17 the supervision of a probation officer. It is the intent of the
18 Legislature that both conditional sentence and probation are
19 authorized whenever probation is authorized in any code as a
20 sentencing option for infractions or misdemeanors.

21 (b) (1) Except as provided in subdivision (j), if a person is
22 convicted of a felony and is eligible for probation, before judgment
23 is pronounced, the court shall immediately refer the matter to a
24 probation officer to investigate and report to the court, at a specified
25 time, upon the circumstances surrounding the crime and the prior
26 history and record of the person, which may be considered either
27 in aggravation or mitigation of the punishment.

28 (2) (A) The probation officer shall immediately investigate and
29 make a written report to the court of his or her findings and
30 recommendations, including his or her recommendations as to the
31 granting or denying of probation and the conditions of probation,
32 if granted.

33 (B) Pursuant to Section 828 of the Welfare and Institutions
34 Code, the probation officer shall include in his or her report any
35 information gathered by a law enforcement agency relating to the
36 taking of the defendant into custody as a minor, which shall be
37 considered for purposes of determining whether adjudications of
38 commissions of crimes as a juvenile warrant a finding that there
39 are circumstances in aggravation pursuant to Section 1170 or to
40 deny probation.

1 (C) If the person was convicted of an offense that requires him
2 or her to register as a sex offender pursuant to Sections 290 to
3 290.023, inclusive, or if the probation report recommends that
4 registration be ordered at sentencing pursuant to Section 290.006,
5 the probation officer's report shall include the results of the
6 State-Authorized Risk Assessment Tool for Sex Offenders
7 (SARATSO) administered pursuant to Sections 290.04 to 290.06,
8 inclusive, if applicable.

9 (D) The probation officer may also include in the report his or
10 her recommendation of both of the following:

11 (i) The amount the defendant should be required to pay as a
12 restitution fine pursuant to subdivision (b) of Section 1202.4.

13 (ii) Whether the court shall require, as a condition of probation,
14 restitution to the victim or to the Restitution Fund and the amount
15 thereof.

16 (E) The report shall be made available to the court and the
17 prosecuting and defense attorneys at least five days, or upon request
18 of the defendant or prosecuting attorney nine days, prior to the
19 time fixed by the court for the hearing and determination of the
20 report, and shall be filed with the clerk of the court as a record in
21 the case at the time of the hearing. The time within which the report
22 shall be made available and filed may be waived by written
23 stipulation of the prosecuting and defense attorneys that is filed
24 with the court or an oral stipulation in open court that is made and
25 entered upon the minutes of the court.

26 (3) (A) At a time fixed by the court, the court shall hear and
27 determine the application, if one has been made, or, in any case,
28 the suitability of probation in the particular case. At the hearing,
29 the court shall consider any report of the probation officer,
30 including the results of the SARATSO, if applicable, and shall
31 make a statement that it has considered the report, which shall be
32 filed with the clerk of the court as a record in the case. If the court
33 determines that there are circumstances in mitigation of the
34 punishment prescribed by law or that the ends of justice would be
35 served by granting probation to the person, it may place the person
36 on probation. If probation is denied, the clerk of the court shall
37 immediately send a copy of the report to the Department of
38 Corrections and Rehabilitation at the prison or other institution to
39 which the person is delivered.

1 (B) *For purposes of subparagraph (A), circumstances in*
2 *mitigation of the punishment prescribed by law shall not include*
3 *the fact that the defendant may not have understood the*
4 *consequences of his or her actions because he or she was raised*
5 *in an affluent or overly permissive household.*

6 (4) The preparation of the report or the consideration of the
7 report by the court may be waived only by a written stipulation of
8 the prosecuting and defense attorneys that is filed with the court
9 or an oral stipulation in open court that is made and entered upon
10 the minutes of the court, except that a waiver shall not be allowed
11 unless the court consents thereto. However, if the defendant is
12 ultimately sentenced and committed to the state prison, a probation
13 report shall be completed pursuant to Section 1203c.

14 (c) If a defendant is not represented by an attorney, the court
15 shall order the probation officer who makes the probation report
16 to discuss its contents with the defendant.

17 (d) If a person is convicted of a misdemeanor, the court may
18 either refer the matter to the probation officer for an investigation
19 and a report or summarily pronounce a conditional sentence. If
20 the person was convicted of an offense that requires him or her to
21 register as a sex offender pursuant to Sections 290 to 290.023,
22 inclusive, or if the probation officer recommends that the court,
23 at sentencing, order the offender to register as a sex offender
24 pursuant to Section 290.006, the court shall refer the matter to the
25 probation officer for the purpose of obtaining a report on the results
26 of the State-Authorized Risk Assessment Tool for Sex Offenders
27 administered pursuant to Sections 290.04 to 290.06, inclusive, if
28 applicable, which the court shall consider. If the case is not referred
29 to the probation officer, in sentencing the person, the court may
30 consider any information concerning the person that could have
31 been included in a probation report. The court shall inform the
32 person of the information to be considered and permit him or her
33 to answer or controvert the information. For this purpose, upon
34 the request of the person, the court shall grant a continuance before
35 the judgment is pronounced.

36 (e) Except in unusual cases where the interests of justice would
37 best be served if the person is granted probation, probation shall
38 not be granted to any of the following persons:

39 (1) Unless the person had a lawful right to carry a deadly
40 weapon, other than a firearm, at the time of the perpetration of the

1 crime or his or her arrest, any person who has been convicted of
2 arson, robbery, carjacking, burglary, burglary with explosives,
3 rape with force or violence, torture, aggravated mayhem, murder,
4 attempt to commit murder, trainwrecking, kidnapping, escape from
5 the state prison, or a conspiracy to commit one or more of those
6 crimes and who was armed with the weapon at either of those
7 times.

8 (2) Any person who used, or attempted to use, a deadly weapon
9 upon a human being in connection with the perpetration of the
10 crime of which he or she has been convicted.

11 (3) Any person who willfully inflicted great bodily injury or
12 torture in the perpetration of the crime of which he or she has been
13 convicted.

14 (4) Any person who has been previously convicted twice in this
15 state of a felony or in any other place of a public offense which,
16 if committed in this state, would have been punishable as a felony.

17 (5) Unless the person has never been previously convicted once
18 in this state of a felony or in any other place of a public offense
19 which, if committed in this state, would have been punishable as
20 a felony, any person who has been convicted of burglary with
21 explosives, rape with force or violence, torture, aggravated
22 mayhem, murder, attempt to commit murder, trainwrecking,
23 extortion, kidnapping, escape from the state prison, a violation of
24 Section 286, 288, 288a, or 288.5, or a conspiracy to commit one
25 or more of those crimes.

26 (6) Any person who has been previously convicted once in this
27 state of a felony or in any other place of a public offense which,
28 if committed in this state, would have been punishable as a felony,
29 if he or she committed any of the following acts:

30 (A) Unless the person had a lawful right to carry a deadly
31 weapon at the time of the perpetration of the previous crime or his
32 or her arrest for the previous crime, he or she was armed with a
33 weapon at either of those times.

34 (B) The person used, or attempted to use, a deadly weapon upon
35 a human being in connection with the perpetration of the previous
36 crime.

37 (C) The person willfully inflicted great bodily injury or torture
38 in the perpetration of the previous crime.

39 (7) Any public official or peace officer of this state or any city,
40 county, or other political subdivision who, in the discharge of the

1 duties of his or her public office or employment, accepted or gave
2 or offered to accept or give any bribe, embezzled public money,
3 or was guilty of extortion.

4 (8) Any person who knowingly furnishes or gives away
5 phencyclidine.

6 (9) Any person who intentionally inflicted great bodily injury
7 in the commission of arson under subdivision (a) of Section 451
8 or who intentionally set fire to, burned, or caused the burning of,
9 an inhabited structure or inhabited property in violation of
10 subdivision (b) of Section 451.

11 (10) Any person who, in the commission of a felony, inflicts
12 great bodily injury or causes the death of a human being by the
13 discharge of a firearm from or at an occupied motor vehicle
14 proceeding on a public street or highway.

15 (11) Any person who possesses a short-barreled rifle or a
16 short-barreled shotgun under Section 33215, a machinegun under
17 Section 32625, or a silencer under Section 33410.

18 (12) Any person who is convicted of violating Section 8101 of
19 the Welfare and Institutions Code.

20 (13) Any person who is described in subdivision (b) or (c) of
21 Section 27590.

22 (f) When probation is granted in a case which comes within
23 subdivision (e), the court shall specify on the record and shall enter
24 on the minutes the circumstances indicating that the interests of
25 justice would best be served by that disposition.

26 (g) If a person is not eligible for probation, the judge shall refer
27 the matter to the probation officer for an investigation of the facts
28 relevant to determination of the amount of a restitution fine
29 pursuant to subdivision (b) of Section 1202.4 in all cases where
30 the determination is applicable. The judge, in his or her discretion,
31 may direct the probation officer to investigate all facts relevant to
32 the sentencing of the person. Upon that referral, the probation
33 officer shall immediately investigate the circumstances surrounding
34 the crime and the prior record and history of the person and make
35 a written report to the court of his or her findings. The findings
36 shall include a recommendation of the amount of the restitution
37 fine as provided in subdivision (b) of Section 1202.4.

38 (h) If a defendant is convicted of a felony and a probation report
39 is prepared pursuant to subdivision (b) or (g), the probation officer
40 may obtain and include in the report a statement of the comments

1 of the victim concerning the offense. The court may direct the
2 probation officer not to obtain a statement if the victim has in fact
3 testified at any of the court proceedings concerning the offense.

4 (i) A probationer shall not be released to enter another state
5 unless his or her case has been referred to the Administrator of the
6 Interstate Probation and Parole Compacts, pursuant to the Uniform
7 Act for Out-of-State Probationer or Parolee Supervision (Article
8 3 (commencing with Section 11175) of Chapter 2 of Title 1 of Part
9 4) and the probationer has reimbursed the county that has
10 jurisdiction over his or her probation case the reasonable costs of
11 processing his or her request for interstate compact supervision.
12 The amount and method of reimbursement shall be in accordance
13 with Section 1203.1b.

14 (j) In any court where a county financial evaluation officer is
15 available, in addition to referring the matter to the probation officer,
16 the court may order the defendant to appear before the county
17 financial evaluation officer for a financial evaluation of the
18 defendant's ability to pay restitution, in which case the county
19 financial evaluation officer shall report his or her findings regarding
20 restitution and other court-related costs to the probation officer on
21 the question of the defendant's ability to pay those costs.

22 Any order made pursuant to this subdivision may be enforced
23 as a violation of the terms and conditions of probation upon willful
24 failure to pay and at the discretion of the court, may be enforced
25 in the same manner as a judgment in a civil action, if any balance
26 remains unpaid at the end of the defendant's probationary period.

27 (k) Probation shall not be granted to, nor shall the execution of,
28 or imposition of sentence be suspended for, any person who is
29 convicted of a violent felony, as defined in subdivision (c) of
30 Section 667.5, or a serious felony, as defined in subdivision (c) of
31 Section 1192.7, and who was on probation for a felony offense at
32 the time of the commission of the new felony offense.

33 SEC. 5. No reimbursement is required by this act pursuant to
34 Section 6 of Article XIII B of the California Constitution because
35 the only costs that may be incurred by a local agency or school
36 district will be incurred because this act creates a new crime or
37 infraction, eliminates a crime or infraction, or changes the penalty
38 for a crime or infraction, within the meaning of Section 17556 of
39 the Government Code, or changes the definition of a crime within

1 the meaning of Section 6 of Article XIII B of the California
2 Constitution.

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